

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Willie E. Dow,)	
)	
Petitioner,)	C.A. No. 1:16-2721-HMH-SVH
)	
vs.)	OPINION & ORDER
)	
Richard A. Cothran, Warden of T.C.I.,)	
)	
Respondent.)	

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Shiva V. Hodges, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina.¹ Willie E. Dow (“Dow”) is a pro se state prisoner seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. In her Report and Recommendation, Magistrate Judge Hodges recommends dismissing Dow’s petition without prejudice on the basis that he has failed to pay the \$5 filing fee or submit an application to proceed in forma pauperis after being warned on August 10, and September 7, 2016, that failing to do so would subject the case to dismissal.

On October 18, 2016, Dow filed an objection to the Report and Recommendation.² Dow claims that he did not receive the court’s orders until October 14, 2014, which was after the time to respond had expired. Dow requests that the court allow him to respond and file his

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

² Houston v. Lack, 487 U.S. 266 (1988).

application to proceed in forma pauperis. Giving Dow the benefit of the doubt, the court will allow this case to proceed. However, he is warned that any failure to timely respond in the future without the prior approval of the court will result in the dismissal of his petition. Based on the foregoing, the court declines to adopt the Report and Recommendation and remands the case to the magistrate judge.

It is therefore

ORDERED that Dow file an application to proceed in forma pauperis or pay the \$5 filing fee within 20 days. It is further

ORDERED that the case is remanded to Magistrate Judge Hodges for further proceedings.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
October 27, 2016